

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 693

91ST GENERAL ASSEMBLY

1675S.04T

2001

AN ACT

To repeal sections 407.820, 407.822, 621.053, 621.055, 621.155, 621.165, 621.175, 621.185, 621.189 and 621.198, RSMo 2000, relating to administrative procedure, and to enact in lieu thereof seven new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.820, 407.822, 621.053, 621.055, 621.155, 621.165, 621.175, 621.185, 621.189 and 621.198, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 407.820, 407.822, 621.053, 621.055, 621.150, 621.189 and 621.198, to read as follows:

407.820. Any person who is engaged or engages directly or indirectly in purposeful contacts within the state of Missouri in connection with the offering, advertising, purchasing, selling, or contracting to purchase or to sell new motor vehicles, or who, being a motor vehicle franchisor, is transacting or transacts any business with a motor vehicle franchisee who maintains a place of business within the state and with whom he has a franchise, shall be subject to the jurisdiction of the courts **and administrative agencies** of the state of Missouri, upon service of process in accordance with the provisions of section 506.510, RSMo, irrespective of whether such person is a manufacturer, importer, distributor or dealer in new motor vehicles.

407.822. 1. Any party seeking relief pursuant to the provisions of sections 407.810 to 407.835 may file an application for a hearing with the administrative hearing commission within the time periods specified in this section. The application for a hearing shall comply with the requirements for a request for agency action set forth in chapter 536, RSMo. Simultaneously, with the filing of the application for a hearing with the administrative hearing commission, the applicant shall send by certified mail, return receipt requested, a copy of the application to the

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

7 party or parties against whom relief is sought. [Within ten days of receiving] **Upon receipt of**
8 a timely application for a hearing, the administrative hearing commission shall enter an order
9 fixing a date, time and place for a hearing on the record. [Such hearing shall be within forty-five
10 days of the date of the order but the administrative hearing commission may continue the hearing
11 date up to forty-five additional days by agreement of the parties or upon a finding of good cause.]
12 The administrative hearing commission shall send by certified mail, return receipt requested, a
13 copy of the order to the party seeking relief and to the party or parties against whom relief is
14 sought. The order shall also state that the party against whom relief is sought shall not proceed
15 with the initiation of its activity or activities until the administrative hearing commission issues
16 its final decision or order.

17 2. Unless otherwise expressly provided in sections 407.810 to 407.835, the provisions
18 of chapter 536, RSMo, shall govern hearings and prehearing procedures conducted pursuant to
19 the authority of this section. The administrative hearing commission shall issue **a final decision**
20 or order, in proceedings arising pursuant to the provisions of sections 407.810 to 407.835[,
21 within sixty days from the conclusion of the hearing]. Any final decisions **of the administrative**
22 **hearing commission** shall be subject to review pursuant to a petition for review to be filed in
23 the court of appeals in the district in which the hearing, or any part of the hearing, is held and by
24 delivery of copies of the petition to each party of record, within thirty days after the mailing or
25 delivery of the final decision and notice of the final decision in such a case. Review pursuant
26 to this section shall be exclusive and decisions of the administrative hearing commission
27 reviewable pursuant to this section shall not be reviewable in any other proceeding, and no other
28 official or court shall have power to review any such decision by an action in the nature of
29 mandamus or otherwise, except pursuant to the provisions of this section. The party seeking
30 review shall be responsible for the filing of the transcript and record of all proceedings before
31 the administrative hearing commission with the appropriate court of appeals.

32 3. Any franchisee receiving a notice from a franchisor pursuant to the provisions of
33 sections 407.810 to 407.835, or any franchisee adversely affected by a franchisor's acts or
34 proposed acts described in the provisions of sections 407.810 to 407.835, shall be entitled to file
35 an application for a hearing before the administrative hearing commission for a determination
36 as to whether the franchisor has good cause for its acts or proposed acts.

37 4. Not less than sixty days before the effective date of the initiation of any enumerated
38 act pursuant to subdivisions (5), (6), (7) and (14) of subsection 1 of section 407.825, a franchisor
39 shall give written notice to the affected franchisee or franchisees, by certified mail, return receipt
40 requested, except as follows:

41 (1) Upon the initiation of an act pursuant to subdivision (5) of subsection 1 of section
42 407.825, such notice shall be given not less than fifteen days before the effective date of such

43 act only if the grounds for the notice include the following:

44 (a) Transfer of any ownership or interest in the franchised dealership without the consent
45 of the motor vehicle franchisor;

46 (b) Material misrepresentation by the motor vehicle franchisee in applying for the
47 franchise;

48 (c) Insolvency of the motor vehicle franchisee or the filing of any petition by or against
49 the motor vehicle franchisee under any bankruptcy or receivership law;

50 (d) Any unfair business practice by the motor vehicle franchisee after the motor vehicle
51 franchisor has issued a written warning to the motor vehicle franchisee to desist from such
52 practice;

53 (e) Conviction of the motor vehicle franchisee of a crime which is a felony;

54 (f) Failure of the motor vehicle franchisee to conduct customary sales and service
55 operations during customary business hours for at least seven consecutive business days unless
56 such closing is due to an act of God, strike or labor difficulty or other cause over which the motor
57 vehicle franchisee has no control; or

58 (g) Revocation of the motor vehicle franchisee's license;

59 (2) Upon initiation of an act pursuant to subdivision (7) of subsection 1 of section
60 407.825, such notice shall be given within sixty days of the franchisor's receipt of a written
61 proposal to consummate such sale or transfer and the receipt of all necessary information and
62 documents generally used by the franchisor to conduct its review. The franchisor's notice of
63 disapproval shall also specify the reasonable standard which the franchisor contends is not
64 satisfied and the reason the franchisor contends such standard is not satisfied. Failure on the part
65 of the franchisor to provide such notice shall be conclusively deemed an approval by the
66 franchisor of the proposed sale or transfer to the proposed transferee. A franchisee's application
67 for a hearing shall be filed with the administrative hearing commission within twenty days from
68 receipt of such franchisor's notice;

69 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of subsection 1 of section
70 407.825, such notice shall be given within sixty days of the franchisor's receipt of a deceased or
71 incapacitated franchisee's designated family member's intention to succeed to the franchise or
72 franchises or of the franchisor's receipt of the personal and financial data of the designated family
73 member, whichever is later.

74 5. A franchisor's notice to a franchisee or franchisees pursuant to subdivisions (5), (6),
75 (7) and (14) of subsection 1 of section 407.825 shall contain a statement of the particular grounds
76 supporting the intended action or activity which shall include any reasonable standards which
77 were not satisfied. The notice shall also contain at a minimum, on the first page thereof, a
78 conspicuous statement which reads as follows: "NOTICE TO FRANCHISEE: YOU MAY BE

79 ENTITLED TO FILE A PROTEST WITH THE MISSOURI ADMINISTRATIVE HEARING
80 COMMISSION IN JEFFERSON CITY, MISSOURI, AND HAVE A HEARING IN WHICH
81 YOU MAY PROTEST THE CONTENTS OF THIS NOTICE. ANY ACTION MUST BE
82 FILED WITHIN TWENTY DAYS FROM RECEIPT OF THIS NOTICE."

83 6. When more than one application for a hearing is filed with the administrative hearing
84 commission, the administrative hearing commission may consolidate the applications into one
85 proceeding to expedite the disposition of all relevant issues.

86 7. In all proceedings before the administrative hearing commission pursuant to this
87 section, section 407.825 and section 621.053, RSMo, where the franchisor is required to give
88 notice pursuant to subsection 4 of this section, the franchisor shall have the burden of proving
89 by a preponderance of the evidence that good cause exists for its actions. In all other actions, the
90 franchisee shall have the burden of proof.

621.053. Any person authorized to protest any action taken by a motor vehicle,
2 **motorcycle or all-terrain vehicle** manufacturer, distributor or representative pursuant to a
3 [motor vehicle] franchise agreement may file a protest with the administrative hearing
4 commission as provided in [sections 407.810 to 407.835] **chapter 407**, RSMo. **For cases**
5 **arising pursuant to chapter 407, RSMo, the administrative hearing commission may, by**
6 **rule, establish a filing fee equal to the filing fee of the circuit court of Cole County.**

621.055. 1. Any person authorized [under] **pursuant to** section 208.153, RSMo, to
2 provide services for which benefit payments are authorized [under] **pursuant to** section 208.152,
3 RSMo, may seek review by the administrative hearing commission of any of the actions of the
4 department of social services specified in subsection 2, 3, [or] 4 **or 5** of section 208.156, RSMo.
5 The review may be instituted by the filing of a petition with the administrative hearing
6 commission. The procedures applicable to the processing of such review shall be those
7 established by chapter 536, RSMo. The administrative hearing commission shall maintain a
8 transcript of all testimony and proceedings in any review governed by this section, and copies
9 thereof shall be made available to any interested person upon the payment of a fee which shall
10 not exceed the reasonable cost of preparation and supply. Decisions of the administrative
11 hearing commission under this section shall be binding subject to appeal by either party. If the
12 provider of services prevails in any dispute [under] **pursuant to** this section, interest shall be
13 allowed at the rate of eight percent per annum upon any amount found to have been wrongfully
14 denied or withheld. In any proceeding before the administrative hearing commission [under]
15 **pursuant to** this section the burden of proof shall be on the provider of services seeking review.

16 2. As compensation for the additional duties imposed upon the administrative hearing
17 commission [under] **pursuant to** the provisions of this section and section 208.156, RSMo, each
18 commissioner shall annually receive the sum of five thousand dollars plus any salary adjustment

19 provided pursuant to section 105.005, RSMo. Such additional compensation shall be paid in the
20 same manner and at the same time as other compensation for the commissioners.

21 **3. Any decision of the department of social services that is subject to appeal to the**
22 **administrative hearing commission pursuant to subsection 1 of this section shall contain**
23 **a notice of the right to appeal in substantially the following language:**

24 **If you were adversely affected by this decision, you may appeal this decision**
25 **to the administrative hearing commission. To appeal, you must file a**
26 **petition with the administrative hearing commission within thirty days**
27 **from the date of mailing or delivery of this decision, whichever is earlier;**
28 **except that claims of less than five hundred dollars may be accumulated**
29 **until such claims total that sum and, at which time, you have ninety days to**
30 **file the petition. If any such petition is sent by registered mail or certified**
31 **mail, the petition will be deemed filed on the date it is mailed. If any such**
32 **petition is sent by any method other than registered mail or certified mail,**
33 **it will be deemed filed on the date it is received by the commission.**

621.150. Any party to a case before the administrative hearing commission may
2 **request that the hearing be held via videoconferencing. If that request is granted, the office**
3 **of administration may charge the requesting party the costs for the videoconferencing.**

[621.155. The administrative hearing commission shall conduct hearings, make
2 findings of fact and conclusions of law, and issue decisions in those cases involving
3 complaints filed pursuant to the provisions of section 536.050, RSMo.]

[621.165. Upon receipt of a written complaint filed pursuant to section 536.050,
2 RSMo, the administrative hearing commission shall as soon as practicable thereafter
3 give notice of such complaint and the date upon which the hearing will be held by
4 delivery of a copy, or by certified mail, of such complaint and notice both to the office
5 of the agency whose authority is challenged and to the complainant.]

[621.175. Hearings in cases filed pursuant to section 536.050, RSMo, shall not
2 be deemed to be contested cases and the procedures established by chapter 536, RSMo,
3 or any other procedural requirements applicable to contested cases shall not apply to
4 such hearings unless required by the provisions of the law relating to the administrative
5 hearing commission, other independent statute or by constitutional provision. Unless
6 the administrative hearing commission rules that special circumstances so require, and
7 sets forth in writing such special circumstances and the reasons why they so require,
8 evidentiary submissions shall be limited to written exhibits, physical evidence,
9 testimony of persons present at the hearing, and affidavits. Cross-examination of
10 persons testifying may be permitted, but shall be limited to situations where there are

11 genuinely disputed questions of material facts. The administrative hearing commission
12 shall maintain a transcript of all testimony and proceedings in hearings, and copies
13 thereof shall be made available to any interested person upon the payment of a fee which
14 shall in no case exceed the reasonable cost of preparation and supply. Rules of
15 discovery shall not apply to hearings held under this section, but the administrative
16 hearing commission, at the request of a party, or on its own motion, may issue
17 subpoenas duces tecum, but not subpoenas ad testificandum, subject to and consistent
18 with the procedures set forth in section 536.077, RSMo. In cases heard under this
19 section the administrative hearing commission may take judicial notice of judicially
20 cognizable facts as well as generally recognized technical or internal administrative facts
21 of which the administrative hearing commission has specialized knowledge. Parties
22 shall be notified either before the hearing, or during the hearing, or by reference in
23 preliminary reports, or otherwise, of the material so to be noticed and shall be afforded
24 an opportunity to contest or to object to the noticing of such material.]

2 [621.185. Decisions after hearings in cases filed pursuant to 536.050, RSMo,
3 shall be in writing and shall include or be accompanied by findings of fact and
4 conclusions of law together with a statement of findings upon which the administrative
5 hearing commission bases its decision. The administrative hearing commission shall
6 as soon as practicable upon its decision either deliver or send by certified mail both
7 notice of its decision as well as a copy of the full decision itself to each party to the
8 proceeding or to his attorney of record.]

2 621.189. Final decisions of the administrative hearing commission in cases arising
3 [under the provisions of sections 621.155 and 536.050, RSMo, and under] **pursuant to the**
4 provisions of section 621.050 shall be subject to review pursuant to a petition for review to be
5 filed in the court of appeals in the district in which the hearing, or any part thereof, is held or,
6 where constitutionally required or ordered by transfer, to the supreme court, and by delivery of
7 copies of the petition to each party of record, within thirty days after the mailing or delivery of
8 the final decision and notice thereof in such a case. Review under this section shall be exclusive,
9 and decisions of the administrative hearing commission reviewable [under] **pursuant to this**
10 section shall not be reviewable in any other proceeding, and no other official or court shall have
11 power to review any such decision by an action in the nature of mandamus or otherwise except
12 pursuant to the provisions of this section. The party seeking review shall be responsible for the
13 filing of the transcript and record of all proceedings before the administrative hearing
14 commission in the case with the appropriate court of appeals.

2 621.198. The administrative hearing commission shall publish and file with the secretary
3 of state [independent sets of] rules of procedure for the conduct of proceedings before it. [One

3 set of rules shall apply exclusively to proceedings in licensing cases under section 621.045.
4 Another set of rules shall apply exclusively to challenges to agency authority brought under
5 section 621.155. A third set of rules shall apply to sales and use and income tax disputes under
6 section 621.050.] Rules of procedure adopted [under the authority of] **pursuant to** this section
7 shall be designed to simplify the maintenance of actions and to enable review to be sought,
8 where appropriate, without the need to be represented by independent counsel. [Each set of rules
9 shall be promulgated under the procedures set forth in sections 536.020 to 536.035, RSMo] **Any**
10 **rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created**
11 **under the authority delegated in this section shall become effective only if it complies with**
12 **and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section**
13 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the**
14 **powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to**
15 **delay the effective date or to disapprove and annul a rule are subsequently held**
16 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
after August 28, 2001, shall be invalid and void.